

Appendix L – Public Comment Letters

**L-4 Eric Larson
San Diego County Farm Bureau
Letter dated May 8, 2002**



FARM BUREAU SAN DIEGO COUNTY

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May 8, 2002

Mr. John Minan, Chair
California Regional Water Quality Control Regional Board San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Chairman Minan:

The Farm Bureau of San Diego County has had an opportunity to review the Staff Report for Nutrient Total Maximum Daily Loads for Rainbow Creek (TMDL) under consideration by your Regional Water Quality Control Regional Board (Regional Board). That review has generated a number of questions and concerns regarding content, assumptions, policies, and methodology. Our comments follow, corresponding to the sections of the draft TMDL.

Executive Summary

Page two of the executive summary indicates that there are no wasteload allocations made for this TMDL, however, there are urban areas within the watershed. If the urban areas are served by publicly (or privately) owned treatment facilities (i.e. Oak Crest Mobile Estates, Rainbow Conservation Camp) then there are point sources within the watershed that must be considered.

2.0 Problem Statement

We are unclear as to whether the listed beneficial uses are specifically designated to Rainbow Creek or are they designated by the Regional Board pursuant to the tributary rule because the Santa Margarita River is so designated. If designated pursuant to the tributary rule, we would ask for evidence as to the appropriateness of the listed beneficial uses within the watershed.

2.3 Historical Information

Monitoring data clearly shows significant decreases in nutrient levels following the 1996 303(d) listing. This improvement calls into question the need to make Rainbow Creek a priority TMDL. Because a 96% reduction was achieved through the program of education administered by the Mission Resource

Conservation District we question why the Regional Board did not pursue a similar approach before choosing to pursue a TMDL.

2.5 Water Quality Objectives

The document states that nutrients are likely contributing to the excessive algal and emergent plant growth. The next sentence then recognizes that where the growth occurred there was no riparian canopy yet where there was riparian canopy there was no algal growth. The Regional Board must be able to make the easy assumption based on actual observation that sunlight has a direct effect on the algal growth. Perhaps the easier solution to the problem is to increase the riparian canopy throughout the watershed and should be addressed.

2.6 Beneficial Uses

Page nine discusses how Dissolved Oxygen (DO) concentrations were not low enough to cause an adverse effect and that DO is not expected to be depressed below the water quality standard. Yet, it then states that there are no results to support that assumption. However, there are clearly no results to not support the assumption either. Since there is not reason to suspect DO problems, then DO monitoring is not necessary. The TMDL is specific to nutrients and algal growth and should therefore stay focused on the problem statement and not go looking for other issues.

Also, it appears that the arroyo chubs need algae. If this TMDL has a detrimental effect on the chubs there is a risk of environmental law conflicts.

4.0 Source Identification

The source identification incorrectly characterizes undeveloped land contributions as small when in fact Figure 4-1 identifies undeveloped land as the single biggest contributor at 33%. Also, the draft TMDL is relying on a CalTrans document to state that their contribution was not significant. Perhaps there should be further review on CalTrans' actual contribution. Individual farmers may have insignificant contributions but they will be subject to the provisions of the TMDL. No one should be exempt in that cumulative impacts do add up.

6.2 Initial Total Nitrogen Load Allocations

The stated inability to reduce loads from parks, preserves, and urban areas places an additional burden on agricultural uses, among others. Any load generated by human activity can be reduced and should carry its fair share, even if its contribution is small.

8.0 Public Review

In reviewing the fifty-two listed events on Attachment D preceding today's public hearing, three involved public participation. Two in 1999, and one on April 11th of

this year. While technically meeting the letter of the law, it is our hope that the Regional Board feels that every means available has been used to notify and engage the residents, property owners, farmers and nurserymen of the Rainbow Creek Watershed.

9.0 Implementation Plan and Monitoring Strategy

The primary implementation component for this TMDL is a county prepared Nutrient Reduction and Management Plan (NRMP). It is our belief that this is a new implementation approach, not seen in other TMDLs. We would like assurances that agriculture will have a place at the table when the County prepares the plan, but see no such mention in the TMDL. We also believe it would be appropriate to have participation by the University of California Cooperative Extension Service. There should also be assurances that the plan will be subject to public review and Regional Board approval.

Page 39, Land Use Planning, indicates the Regional Board's desire to direct and evaluate county land use ordinances and their provisions. We must state our concern with the Regional Board injecting itself into land use decision making. It is one thing for the Regional Board to make the County the lead agency for the NRMP, but quite another to have the County answer to the Regional Board on land use matters. We can think of no other regulatory agency that assumes such a role.

Page 40, CEQA Responsibilities Section, also raises concerns about Regional Board participation in local land use decisions. A reading of this paragraph implies that the Regional Board is asking the County to apply CEQA requirements and mitigation measures on agricultural operations, a condition that does not currently exist. As in the preceding paragraph, the Regional Board's concern should be meeting water quality objectives, not influencing land use decision making.

11.0 Economic Considerations

This section fails to adequately address the costs that may be incurred by agricultural operations to implement Best Management Practices (BMPs). For example, the Table 11-5 statement that BMPs may offer costs savings as a result of lower fertilizer and water usage is contrary to the fact that the Hines Nursery investment may be as much as \$2 million.

When the document discusses the cost of BMPs, it does not consider whether the BMPs will actually help to meet the load allocations given. There must be some evaluation of the suggested BMPs and their effectiveness.

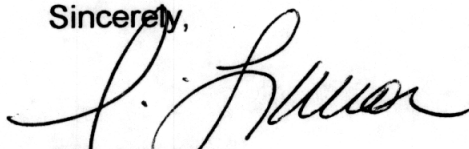
General Comments

We are unclear whether this document is the Regional Board's basin plan amendment or just the TMDL that is to be submitted to the U.S. Environmental

Protection Agency. This must be clear. The U.S. Environmental Protection Agency (U.S. EPA) has no implementation authority over nonpoint sources of pollution. Therefore, it is not necessary for the state to submit the implementation components of a TMDL to U.S. EPA. We suggest that the Regional Board not submit such implementation components to U.S. EPA in that the U.S. EPA has no authority or jurisdiction and there is no reason to give them the opportunity to review and comment on such implementation plans.

Finally, we have found that this TMDL is overburdened with data gaps. In many instances data is incomplete, leading to numerous comments about re-evaluating the TMDLs, adjusting allocations, and the need for better data. These data gaps create a situation where the Regional Board is considering a TMDL that sets an unachievable allocation of zero nutrient loads and explains it away by stating better data will be collected at a future date. Successful implementation of any plan needing the cooperation of stakeholders must show that the goals and remedies are reasonable, achievable, and based on reliable information.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Larson", written over a horizontal line.

Eric Larson
Executive Director